

## UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Edward Gibbs Jr.

Petitioner,

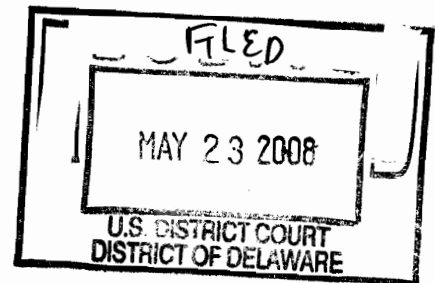
v.

Perry Phelps, Warden,  
Delaware Correctional Center, and Attorney  
General of the State of Delaware,  
Beau Biden

Respondent.

D.C. Case No. 07-36

Third Cir. No. \_\_\_\_\_



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Petition for Certificate of Appealability

To the Honorable Circuit Judges of the United States Court of Appeals for the Third Circuit:

The petition of Edward Gibbs respectfully shows:

1. That petitioner made application to the Honorable Joseph J. Farnan,

Judge of the United States District Court of Delaware on January 18, 2007

for a writ of habeas corpus. A copy of which application is attached.

2. The said Judge of said United States District Court denied petitioner's application for a writ of habeas corpus by an order dated May 9, 2008. A copy of which is attached.

3. Petitioner filed a notice of **appeal** from said order in said district court on May 19, 2008. A copy of said notice of **appeal** is attached.

4. The detention complained of by your petition in his application for a writ of habeas corpus arose out of process issued by a state court, to wit:

1) Superior court lacked jurisdiction; No valid waiver of  
preliminary hearing, not waived open court, see Ct. Crim. R. 5(d)

- See attached sheet -

2) Judge Bantley Abuse discretion; Failed to make inquiry in conflict; *Glasco v. U.S.* 62 S.Ct 459 (1942) U.S.C.A. 6<sup>th</sup>

3) Ineffective assistance of counsel; Counsel failed to subpoena witnesses; *DE Const. Art 1, § 7...* U.S.C.A. 6<sup>th</sup> U.S. v. *Uronis* 466 U.S. 64. (1994)

(4) Supreme Court Errored; by not ruling on direct Appeal claim; Ineffective Assistance of counsel... *James H. Lewis V. State DE.* 759 A2d 709 (2000) U.S.C.A. 6

Denied Motion Evidentiary hearing; Challenging U.S.C.A. 8<sup>th</sup> & 14<sup>th</sup> *Townsend V. Sain* 83 S.Ct. 745 (1963)... *Ricky Lee Eas* V. *S.W. Ornoski* 431 F3d 1158 (2005)...

5. The above-named Judge of said United States District Court has refused to issue a Certificate of Appealability upon petitioner's application for writ of habeas corpus for the reasons stated in his/her order dated May 9, 2008 denying petitioner's petition for a Certificate of Appealability. A copy of said order is attached.

6. Under Rule 22(b) of the Federal Rules of Appellate Procedure, it is necessary for a Certificate of Appealability to be issued before the petitioner may appeal to this court from the denial of his application for a writ of habeas corpus.

7. In addition to the reasons stated in petitioner's application for a writ of habeas corpus, a Certificate of Appealability should be issued for the following reasons:

Justices of reason would find it debatable whether  
the court was correct in it's procedure ruling  
Slack v. McDaniel 529 U.S. 473, 484 (2000)

Wherefore, your petitioner respectfully request that a Certificate of Appealability be issued.

Dated: May 19, 2008

Edward Dilley

Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

## Certificate of Service

I, Edward Gibbs, hereby certify that I have served a true

And correct cop(ies) of the attached: Notice of Appeal & Order

<sup>(2)</sup>  
U.S. District Court, For the District of Columbia upon the following  
parties/person (s):

<sup>1 copy</sup>  
TO: James T. Watley  
Department of Justice  
820 N. French St  
Wilmington Del.  
19801

<sup>3 copies</sup>  
TO: Clerk  
United States District Court  
844 N. King St. Box 18  
Wilmington Del.  
19801-3570

<sup>4 copies</sup>  
TO: Clerk Third Circuit  
United States Court House  
601 Market St  
Philadelphia Pa.  
19106

TO: \_\_\_\_\_  
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BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 19 day of May, 2008

Edward Gibbs